

## Federal Government



President of the United States

- Chief Executive
- Commander-in-Chief



Secretary of Defense

- Civilian Cabinet-level Appointees
- Serve at the pleasure of the Chief Executive



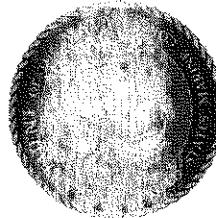
Secretary of Veterans Affairs



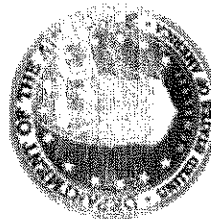
Chief of Staff of the Army



Chief of Naval Operations



Commandant of the  
Marine Corps



Chief of Staff of the Air Force

- Subordinate military commands

## Colorado State Government



Governor of Colorado.

- Chief Executive
- Commander-in-Chief

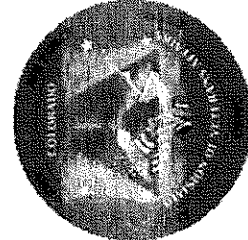


The Adjutant General of Colorado

- Military Cabinet-level Appointee
- Serves at the pleasure of the Chief Executive



Assistant Adjutant General, Army



Assistant Adjutant General, Air Force



Wing Commander

Director of the Division  
Of Veterans Affairs

Assistant Adjutant General, Space  
Director of the Joint Staff

- Subordinate military and civilian divisions

*The Adjutant General serves the Governor in the roles that the Secretary of Defense, Secretary of Veterans Affairs and the Chairman of the Joint Chiefs of Staff serve the President.*

**Senate Judiciary Committee**  
**April 17, 2013**  
**House Bill 1200- Uniform Deployed Parents Custody and Visitation Act (UDPCVA)**

**FACTS**

- As of August 2012:
  - 100,000 soldiers stationed overseas permanently;
  - 80,000 soldiers assigned to Afghanistan, Iraq and Kuwait;
  - 96,000 soldiers deployed in 140 countries around the world.
- Over 37,000 active duty and 15,800 Reserve and Guard service members stationed in Colorado statewide.
- A significant percentage of service members are single parents.
- Increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently.
- The issues with which parents, judges and lawyers have struggled include:
  - Custody jurisdiction;
  - Substitute visitation by step-parents and grandparents during deployment;
  - Consideration of military service as a factor in custody determinations; and
  - Whether a temporary court order should be made permanent when a parent returns from deployment.
- Child custody and visitation are within the province of state law.
- State statutes are sporadic and vary greatly.
- Because of the mobile nature of military service, and because the child's other parent often resides in a state different from the deployed parent's state, issues relating to the child of a service member will often involve two or more states.
- There is a need for uniformity.

Source, *Uniform Law Commission Annual Report*, 2011-2012, pages 10 and 11.

## **POLICY UNDERPINNING UDPCVA**

“...ensure that parents who serve their country are not penalized for their service while still giving adequate weight to the interests of the other parent, and, most importantly, the best interests of the child.”  
*UDPCVA prefatory note.*

## **KEY ELEMENTS OF UDPCVA**

- A deploying parent’s residence will not be deemed changed on account of the deployment; generally states that have entered existing child custody orders (either existing permanent orders before deployment, or temporary orders on notice of deployment) will retain jurisdiction during deployment even if the non-deploying parent and child leave the state during the service member’s deployment.
- Easy procedures for out of out-of-court settlement of custody arrangements for parents who are in agreement.
- Expedited judicial resolution for parents who cannot agree to custody arrangements during deployment.
- Provisions governing termination of temporary custody arrangements following return from deployment subject to best interest considerations.

## **WHY STATES SHOULD ADOPT THE UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT**

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses the wide variability in the ways that states handle child custody and visitation issues that arise when service members are deployed. Because of the mobile nature of military service, and because a child's other parent will often live in or move to a different state than the deployed service member, bringing the child with them, there are many times that these custody issues involve two or more states. Yet different states now apply very different substantive law and court procedures from one another when custody issues arise on a parent's deployment. The resulting patchwork of rules makes it difficult for the parents to resolve these important issues quickly and fairly, hurts the ability of deploying parents to serve the country effectively, and interferes with the best interest of children.

The UDPCVA provides uniform, expeditious, and fair disposition of cases involving the custody rights of a member of the military. The UDPCVA ensures a proper balance of interests—protecting the rights of the service member, the other parent, and above all the best interest of the children involved.

Among its attributes that will improve state law, the UDPCVA:

- Encourages and facilitates mutual agreement between parents to a custody arrangement during deployment
- Provides a set of expedited procedures for entry of a temporary custody order during deployment
- Integrates with the Uniform Child Custody Jurisdiction and Enforcement Act, and declares the residence of the deploying parent not changed by reason of the deployment, thus protecting against jurisdictional litigation
- Allows the court, at the request of a deploying parent, to grant the service member's portion of custodial responsibility in the form of caretaking authority to an adult nonparent who is either a family member or with whom the child has a close and substantial relationship when it serves the child's best interest
- Declares that no permanent custody order can be entered before or during deployment without the service member's consent
- Guards against the possibility that courts will use past or possible future deployment as a negative factor in determining custody by service members without serious consideration of whether the child's best interest was or would be truly compromised by such deployment

## Considering the Uniqueness of Military Service when Determining Child Custody

**Subject:** Many divorced Service members (SMs) who are deployed away from their family find that States do not consider the unique aspects of military service when making custody decision. Although the Department believes the welfare of children is paramount, it also believes the demands of military service should not abrogate the parent's rights. There are several protections the Department believes would serve both the parent's rights and the welfare of the children.

### **Discussion:**

Many SMs have custody of, or visitation rights with, children whose other parent is not the SM's current spouse. Absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children. In spite of the substantially increased activity of our Armed Forces around the world today, not all States have passed legislation designed to address the unique aspects of military service when balancing equities involved in decisions about child custody and visitation rights. The Department thinks States are in the best position to balance such equities, and believes they should at a minimum address certain basic substantive points and consider certain procedural protections as the following:

- (1) No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.
- (2) Past absence due to military service should not serve as the *sole* basis for altering a custody order in place prior to the absence.
- (3) The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The non-absent parent should bear the burden of proof.
- (4) The mere *possibility* of future absence due to military service should not be an appropriate consideration for child custody determinations.
- (5) A SM with visitation rights be allowed to petition the court to allow those visitation rights to be delegated to a third person during the SM's absence due to military service.

Additionally, the Department believes States should consider procedural protections to allow expedited hearings and electronic testimony.



OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE  
(MILITARY COMMUNITY AND FAMILY POLICY)

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DoD-State Liaison Office

15 April, 2013

The Honorable Ellen Roberts  
Colorado State Senate  
State Capitol Building  
Denver, Colorado

Dear Senator Roberts:

I'm Jacline Harriman, Department of Defense Regional State Liaison for the Western region, working for the Deputy Assistant Secretary of Defense for Military Community and Family Policy, and I am a veteran. My office partners with states on 10 quality of life issues affecting military families. I am writing to you in regards to your hearing on HB1200, concerning child custody and Service members. I will not be available to attend the hearing and wish to submit the following as testimony describing the importance of this issue to the military community.

Unfortunately, in an environment where the divorce rate among military continues to climb, many divorced Service members have custody of, or visitation rights with children whose other parent is not the Service member's current spouse. The welfare of the children in this situation is always paramount; however, there are certain basic substantive considerations required in order to balance the equities involved in decisions about child custody and visitation rights as they affect members of the military.

Many of these Service members who are deployed away from their family find that States do not consider the unique aspects of military service when making custody decisions. These absences due to military service can undermine and disrupt existing arrangements, creating stress on parents and children. Without contact from their children, deployed members are frequently devastated, degrading their ability to focus on their mission. These concerns cause such stress that this issue became one of the top issues for Department of Defense State Liaison office to focus on in the States.

Although the Department of Defense believes the welfare of the child is paramount, it also believes the demands of military service should not nullify the parent's rights. We believe the States are in the best position to balance such equities and believe there are several protections states could enact which would serve both the parent's rights and the welfare of the children.

The policy put forth in the language of HB 1200 addresses areas of concern related to Service members and child custody. In particular, that past or future deployments are not the sole factor in determining custody decisions. It is difficult enough for a servicemember to have long separations from their children, but to risk the loss of custody and visitation solely because of their service is a grave injustice.

The passage of this bill would send a clear message to our military in Colorado that their absence due to military duty will not jeopardize the return of their child(ren) and costs them additional delays and court expenses to reinstate what was already determined by the court system.

We wish to thank Senator Roberts for sponsoring this legislation and thank you for the opportunity to submit testimony. I look forward to Colorado's leadership in adopting these vital protections for our Service members.

Sincerely,

Jacline L. Harriman  
Western Region State Liaison

*Improving the Lives of Military Members and their Families*